00COURT'S ORDER WHETHER THE CASE IS OR IS NOT APPROVED FOR REPORTING

{Chapter VIII, Rule 32(2)(b)}
Description of the Case.

Criminal Appeal No. 715 of 2001
(Old No. 1590 of 1984)

Pritam Singh S/o Suchha Singh,
R/o Village Jarasu Pratappur Jogikher,
P.S. Khatima, P.O. No.4, Nainital **...Appellant**

Versus

State **....Opposite Party**

Sri M.S. Chauhan, ld. amicus curiae for the appellant
Sri Amit Bhatt, learned Additional G.A. for the State

Approved for reporting.
Not approved for reporting.

Date: April 11, 2007

(Dharam Veer, J.)

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

CRIMINAL APPEAL No. 715 of 2001
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HON. DHARAM VEER, J.

This criminal appeal, under Section 374(2) of the Code of Criminal Procedure, 1973 (hereinafter referred as **Cr.P.C.**), has been preferred by the appellant against the judgment and order dated 26.04.1984 passed by IInd Addl. Sessions Judge, Nainital in Sessions Trial No.42 of 1983, *State Vs. Ram Gopal @ Gopal Singh and Pritam Singh,* whereby the learned II Additional Sessions Judge convicted the appellant under section 395 I.P.C. and has awarded a sentence for five years rigorous imprisonment.

2. In brief, the prosecution story is that that on the intervening night of 12/13-11-1982, the complainant, his father Sri Parmanand and younger brother Madan lal were sleeping in the house along with their families. A lantern was burning in the verandah of the house and the door in the western boundary was lying opened. The parents of the complainant Krishan Kumar, his sister Darshan Rani and Pushpa Rani W/o Madan Lal were sleeping in the verandahs of the houses. At about 11:00 p.m., some persons removed the wristwatch from the wrist of the

Sri Parmanand- father of the complainant and thereafter he at once got up and raised an alarm. The complainant, who was sleeping in the kitchen, also got up on hearing the alarm and saw through the grill of the window of the kitchen that about 8 to 10 dacoits were in the verandah of the house. Out of them, two dacoits who were armed with guns went on the roof of the house through the stairs. The others, got removed the jewelry worn by the mother and sister of the complainant and wife of Madan Lal under threat. After that, the dacoits broke the door of the room in which Madan Lal was sleeping and entered in that room. The dacoits caught Madan Lal and asked him abut the whereabouts of valuables. Madan Lal raised an alarm and when he started running, one dacoit made a fire shot hitting Madan Lal and he fell down. On it, the complainant Krishan Kumar also made fire shots from his licenced gun. The dacoits started to loot the property belonging to complainant after breaking open the almirah and boxes. The ladies of the house somehow managed to run out of the house and they raised alarm in the village. Thereafter, Shanoo Ram came there and made fire shots by his licensed gun. The dacoits were making fires shots and calling loudly "fdlh us 'kkj epk;k ;k 'kkj epkus dh dkf'k'k dh rks tku ls ekj nsxsA". Chaudhary Ram lit fire in the Pual (Qwl) lying in a heap outside the boundary wall of the house towards western northern corner. The dacoits also threatened the complainant and said "viuh cUnwd ckgj Qsd nks ughs rks rq>s ftUnk ughs NksMsxsA". The complainant also sustained fire injuries in this incident. The fire shot made by complainant also hit one of the dacoits, so they ran away from the northern door of the house along with looted property. Witness Chaudhary Ram,

Shanoo Ram, Diwan Chandra and Babu Ram etc. came on spot and identified the dacoits in the light of burning Pual. The complainant and his family members also identified the dacoits in the light of the torches and lantern. The accused Ramgopal and Pritam Singh were among the dacoits. The injured Madan Lal and Krishna Kumar were then medically examined and Madan Lal was admitted in hospital. The report of the incident was then lodged at police station by Krishna Kumar which is Ex.Ka-3. On the basis of this written report, the Head Moharrir Har Pal Singh prepared a Chik Report i.e. Ex.Ka-15 and on the basis of written report, G.D. report Ex.Ka-16 was then prepared by him and that G.D. report Ex.Ka-16 were duly proved by P.W.5, Shri Ajai Pal Singh by his statement who is the Investigation Officer of the case.

3. After the incident, the injured Madan Lal was medically examined by the Dr. Ashutosh Mishra on 13.11.1982 at 12:50 A.M. in Combine Hospital, Jaspur and his injury report was marked as Ex.Ka-1. Krishna Kumar, the another injured person was also medically examined at the same hospital on 13.11.1982 at 12:30 A.M. and his injury report is marked as Ex.Ka-2. Thereafter, the F.I.R. Ex.Ka-3 was lodged by the complainant Krishan Kumar at Police Station, Jaspur at 1:45 A.M. on 13.11.1982. After that, the Investigation Officer inspected the spot, recorded the statements of witnesses and prepared the site plan. The Investigation Officer has also prepared a Fard for taking the Lantern in his custody and Supurdginama and that Fard is Ex.Ka-4. He has also prepared a Fard for taking the blood stained Baniyan of Krishan Kumar which was marked as Ex.Ka-5. He has also prepared a Fard for taking out the four doors

in his possession and given his Supurdgi and the Fard was marked as Ex.Ka-6. The I.O. has also prepared a Fard for taking out 'Paraat and Kanaster' having pallet holes and D.B.B.L. Gun and Supurdginama and that have been marked as Ex.Ka-7. The memo of Torch, Khokas, pallets, Tiklis and Bullets have been marked as Ex.Ka-8 by the I.O. for preparing the Fard and the memo of Ash has been marked as Ex.Ka-9. The site plan inspected by the I.O. has been marked as Ex.Ka-10. The I.O. also prepared a Fard relating to taking out of the blood stained clothes of injured Madan Lal and that have been marked as Ex.Ka-11. He has also inspected the broken doors and has prepared the Fard and Supurdginama, Ex.Ka-12. During the investigation, he has recorded the statement of the witnesses and after investigation, he submitted charge-sheet i.e. Ex.Ka-13 against Pritam Singh accused and against Ram Gopal and that charge-sheet has been marked as Ex.Ka-14. The Munsif Magistrate, Kashipur after completing the process under Section 207 Cr.P.C. has committed the case to the court of Sessions. The learned II Additional Sessions Judge has framed the charge under Section 395/397 of I.P.C. against the present applicant Pritam Singh and other accused Ram Gopal. He pleaded not guilty and claimed to be tried, therefore, prosecution was directed to adduce its evidence.

4. In support of his case, the prosecution has examined as many as five witnesses. P.W.1 is Dr. Ashutosh Mishra, who has medically examined the injured persons Krishna Kumar and Madan Lal. He has stated that on 13.11.1982, he was posted in Combine Hospital, Jaspur and on the same day on 13.11.1982 at 12:50 A.M., he examined Madan Lal

S/o Parmanand and he found the following injuries on his body:-

1. *Multiple pallet mounds over an area 10 cm. x 11 cm., 3 cm posterior to right interior superior iliac bone over lying the iliac crest on the right side. Each punctured wound is circular in diameter 0.5 cm. Fresh bleeding present. Blackening present at the center of the injured area.*
2. *Abrasion 2 cm . x 1 cm., 4 cm below and lateral to the right nipple. Fresh bleeding present.*

The doctor has also stated that the Injury No.1 is possible by firearm in a close range and the injury No.2 is possible by some blunt weapon and he has proved the Medical Report Ex.Ka-1.

5. Dr. Ashutosh Mishra, P.W. 1 also medically examined Krishan Kumar- P.W.2 on 13.11.1982 at 12:30 A.M. and he found the following injuries on his body:-

1. *Punched out. Pallet wound. 12½ cm below and lateral to right nipple over the chest wall. Fresh bleeding present.*
2. *Punched out pallet wound over the dorseum of left wrist 6 cm. in front of wrist joint. Fresh bleeding present.*
3. *Punched out pallet wound over the lateral aspect of the middle phaling of the middle finger of left hand. Fresh bleeding present.*
4. *Injuries caused by pallets of gunshots. Fresh in duration. Simple in nature.*

The doctor has also proved the medical report Ex.Ka-2.

6. The doctor has also stated that the injury on both the injured persons are caused to be possible on 12.11.1982 in the night at 11:00 P.M. He has also stated that the general condition of the Madan Lal was poor.

7. P.W. Krishna Kumar, who is the complainant of the case also, was examined and he has stated that in the intervening night at 12/13-11-1982, at about 11:00 A.M., he and his children were sleeping in the Kitchen and in the house, his father, mother, sister and Pushpa Rani and Madan Lal were also sleeping. He got awakened by hearing the cries of his father. The dacoits were snatching the wristwatch of his father and then his father wake up and raised an alarm. It was stated that when he saw from the grill of the window of the kitchen, he saw about 8 to 10 dacoits and two out of them had gone on the roof through the stairs and both these dacoits have guns in their hands. The other dacoits snatched the ornaments from his mother, sister and sister in law. The dacoits have also entered in the room by breaking the door in the room where the Madan Lal was sleeping. They started beating Madan Lal and asked about the valuables. When his brother tried to run away, then the dacoits have fired on him and Madan Lal received injuries by this fire. Then the complainant has also started firing from his licenced gun on the dacoits and the dacoits have also fired on him so that he got the injuries and then his father and mother cried loudly. After hearing the cries, villagers Shanu Ram, Diwan Chand, Chaudhary Ram, Babu Ram etc. came and Sanu Ram also fired on the dacoits. Then Chaudhary Ram burnt the Pual lying there and in the light of Pual fire, the dacoits were identified. It was also stated that Pritam Singh and Ram Gopal were also among dacoits. He has identified him on the spot and he is also known to him before the occurrence. The dacoits thereafter runaway from the spot by taking the looted items. One dacoit had also got the injury

from the fire of the complainant. After that, all the dacoits ran away and thereafter complainant Krishan Kumar and his brother Madan Lal has reached to the hospital for their treatment and there the doctor has medical examined them and prepared the injury report- Ex.Ka-1 and Ka-2. Thereafter, the Krishan Kumar reached to the police station and Madan Lal was admitted in the hospital and the FIR was lodged in the P.S. Jaspur on 13.11.1982 at 1:45 A.M. He has dictated the FIR to one Darshan Lal and Darshan Lal written whatever he has stated and that report is Ex.Ka-3. Thereafter, the police has come on the spot and the I.O. has taken the Lantern in his possession and has given his *Supurdgi* and thereafter the Fard was prepared which is Ex.Ka-4. He has also signed on this Fard and has identified the signatures also on the Fard. The I.O. has also taken into possession his blood stained Baniyan and sealed on the spot and prepared a Fard i.e. Ex.Ka-5 and on the Fard, the complainant has also signed. The I.O. has also inspected the pallet on the door and he has taken the broken door in his possession and given in his supurdgi in which so many pallets were there. The I.O. has also prepared a Fard on the spot in which he has also signed as Ex.Ka-6. His licencee gun, Parat and Kanastar in which the pallets were there, the I.O. has also taken the same in his possession and handed over to his Supurdgi and a Fard in this regard was prepared which is Ex.Ka-7, which has also been signed by him. The torch which was left by the dacoits on the spot, pallets, Tikli and Bullets were also taken by the I.O. in his possession on the spot and i.e. Ex.Ka-8 and a Fard was prepared in which the complainant has signed. The Pual which was burned and the ashes of the Pual were also taken

in the possession and sealed on the spot and the Fard Ex.Ka-9 was also prepared and he has also signed on the Fard.

8. P.W. 3 Madan Lal was also examined and he has stated that on 12/13-11-1982 at 11:00 p.m., he was in his room and his father was sleeping in verandah. Krishan Kumar was sleeping in Kitchen and his sister, mother, children, sister in law, all were sleeping and suddenly his father made a noise. The dacoits suddenly entered into the house by breaking the door and they were 8 to 10 in number and two persons went on roof of the house. The dacoits have also entered in the room by breaking the door in the room where he was sleeping. They started beating him and asked about the valuables and looted the other ornaments of his family members. When he tried to run away, then the dacoits have fired on him. The dacoits were having guns, rifles and revolver etc. and they were also having torch and lathis. The brother of Madan Lal also started firing from his licenced gun on the dacoits and his brother also received pallets. At that time, Shanu Ram, Diwan Chandra came on the spot and Chaudhary Ram burnt the Pual. The lantern was being burnt on his house and in the light of that lantern, he identified Gopal and Pritam. He also identified others by face but he did not know his name. Thereafter, he was taken to hospital where he was medically examined. There was also a fire in the Parat-Ex.1. The clothes which were blood stained were taken by police. He also identified the clothes which were opened in the court in sealed cover and in the said clothes, the shirt was marked as Ex.-II, Pajama was marked as Ex.III, Baniyan was marked as Ex.IV and underwear was marked as Ex.V.

9. P.W. 4 Diwan Chand was also examined and he has stated that on the date of occurrence at 11:00 p.m., after hearing the noise of daughter of Parmanand, he wake up. When he ran towards the home of Parmanand, he heard the sound of fire, which came from the house of Parmanand. He also stated that Shanu Ram who lives in front of Parmanand, also did one fire. Baburam, Shanu Ram etc. also came on the spot. He also stated that Chaudhary Ram burned the Pual lying there and in the light of fire of Pual, he identified the accused Gopal and Pritam. He further stated that the dacoits were 8 to 10 in number and armed with Rifles, Tamanchas and Lathis. Thereafter, he went to the home of Parmanand where the Madan Lal was got injured by the dacoits and Krishna Kumar got pallets by the dacoits.

10. P.W. 5 Ajay Pal Singh, S.O. was also examined who stated on oath that he was posted as S.O. in P.S. Jaspur and he took the responsibility of inquiry for this case. He went there, prepared Naksha Nazri which is prepared and signed and marked as Ex.Ka-10. He also stated that he took into possession the Lantern due to which the accused were identified. Thereafter, he prepared its Fard and Supurdginama Ex.Ka-4, which was written by him and signed by witnesses. He also took in his possession the Baniyan of injured Krishan Kumar and prepared Fard Ex.Ka-5. He also prepared a Fard regarding Ex.Ka-6, Ka-7, Ka-8 and Ka-9 which was written by him in the presence of the witnesses and the articles on the spot were taken into the custody of Police and he took in his possession, the Doors, Parat, Gun, Kanastar (Tin) and Lantern were given in the Supurdgi of complainant. Ex. Ka-5 Baniyan, was open in the presence of the

witness who stated that the said Baniyan was of Krishan Kumar which was taken into custody by Police and was marked as Ex.VI. The ash box Ex.Ka-9 was also opened and it was identified by the Krishan Kumar and thereafter was marked as Ex.VII. Ex.Ka-8 was open in the presence of witness and the witness identified the same and stated that Torch Ex.VIII and Bullets, Pallets and Tiklis Ex.IX were the same which were taken by the him from the spot. Ex.X to XX are the empty Khokhas which were taken in possession on spot by him. The blood stained clothes of Madan Lal Ex.II to Ex.V were also taken by him and thereafter Fard was prepared and marked as Ex.Ka-11. The door which was got broken by the dacoits relating to room of Madan Lal was also taken into custody and Fard was prepared and was marked as Ex.Ka-12. After completing the investigation, the charge sheet against Pritam Singh and charge sheet against Ram Gopal alias Gopal was forwarded which was signed by him and marked as Ex.Ka-13 and Ex.Ka-14. The Chik report was prepared by H.M. Harpal Singh and the same was marked as Ex.Ka-15 and the carbon copy of the G.D. was prepared in one process written by H.M. Harpal Singh was verified by him and marked as Ex.Ka.16. After receiving the report from the Doctor that injured Madan Lal has got firearm injuries, the entry of the same got done in Report No.3 by H.M. Harpal Singh which was marked as Ex.XXI.

11. Thereafter the statements of the Appellant/Accused under Section 313 Cr.P.C. was recorded by the court in which the accused has stated that he was living in the same village before the incident and he was residing in the village with Shanu Ram. Krishna Kumar asked him to come and work

with him for which he did not agree, hence he was falsely implicated.

12. After perusing the above evidence, the learned II Additional Sessions Judge has convicted the appellant/accused under Section 395 I.P.C. and awarded sentence to the present appellant to 5 years R.I. Against the said order, the appellant has filed the present appeal.

13. I have heard Sri M.S. Chauhan, learned amicus curiae for the appellant and Sri Amit Bhatt, learned Additional Government Advocate for the State.

14. The above said incident is said to be taken place in the intervening night of 12/13-11-1982 at 11:00 P.M. in Village Garhi Hussain, P.S. Jaspur, the then District Nainital and now District U.S. Nagar. As per the Chik F.I.R., the distance of place of incident from the Police Station is 7 Kms. The injured Madan Lal was taken to the Combined Hospital, Jaspur wherein he was medically examined on 13.11.1982 at 12:50 A.M. Krishan Kumar was medially examined in the Combine Hospital, Jaspur on 13.11.1982 at 12:30 A.M. After that the Krishan Kumar has lodged the F.I.R. Ex.Ka-3 in the P.S. Jaspur at 1:45 A.M. on 13.11.1982. In this way, the F.I.R. is prompt and there is no delay in lodging the F.I.R. and it is natural that after receiving the injuries, all the injured persons have gone for the treatment in the hospital and after that they will lodge the F.I.R. The conduct of the complainant is natural and justified as per the circumstances of the case. The Investigation Officer has prepared the site plan, recorded the statement of the witnesses, recovered the blood stained earth,

recovered the bloodstained clothes of the injured persons, doors and gun pallets and have visited the site and prepared the site plan on 13.11.1982. After that, the investigation officer has submitted the charge-sheet. P.W.1, the doctor who has been examined namely Dr. Ashutosh Mishra has stated that the injuries on the body of injured persons were possible in the intervening night of 12/13-11-1982 at 11:00 P.M. by the firearm. He has also proved the injury reports. P.W.2 is the Krishan Kumar and P.W.3 is Madan Lal and both are the injured witnesses and the Krishna Kumar is complainant also and P.W.4 Diwan Chand is an independent eyewitness. From the evidence and statement of P.W.1 Dr.Ashutosh Mishra, P.W.2 Krishna Kumar, P.W.3 Madan Lal and P.W.4 Diwan Chandra, it is well established that the present appellant alongwith 8 to 10 persons has committed dacoity in the house of complainant Krishan Kumar and Madan Lal and the present applicant with the help of other persons who were 8 to 10 in number, have caused the injuries to Krishan Kumar and Madan Lal and looted the valuables, ornaments and property from the house of Krishan Kumar and Madan Lal.

15. P.W. 2 Krishan Kumar was cross-examined at length by the defence counsel but nothing has come out from his statement which will create a doubt in his statement. The statement of Krishan Kumar is reliable, trustworthy and natural. His presence on the spot is very much natural and he has got the injury at the spot. The same is the case of Madan Lal P.W.3 also. P.W.4 Deep Chand is of the same village and his presence on the spot is also natural. He was also cross-examined at length but nothing came out from him which may discredit his testimony.

16. Hence, from the statements of P.W. 2 Krishna Kumar, P.W.3 Madan Lal and P.W.4- Deep Chand, it is crystal clear beyond reasonable doubt that the appellant/accused has committed the dacoity in the house of Krishna Kumar and Madan Lal accompanying with 8 to 10 other dacoits.

17. Learned counsel for the appellant argued that because the present appellant was serving with Shanu Ram and since he refused to work with Krishna Kumar, hence he was falsely implicated. I do not find any force in the contention of learned counsel for the appellant. From the evidence discussed above, it is well established that the appellant committed dacoity at the house of Krishna Kumar and Madan Lal and the case is proved against the appellant and even from the Krishna Kumar, the defence counsel has not asked any question for the same and even has not given any suggestion that he wants to get present applicant serving with him and the accused refused to do like so. Only in 313 Cr.P.C. statements he has given this statement which means to be after thought statement and that cannot be relied. Thus, the argument of learned counsel for the appellant is misconceived and cannot be accepted in view of the facts and circumstances discussed above.

18. Learned counsel for the appellant next argued that where the Pual was fired and the light fire from the said Pual's fire, that Pual was put outside the boundary wall while all the complainants were inside the boundary of the house and in the light of that fire, the applicant/ dacoits could not be identified. This argument of the learned counsel for the appellant is also not tenable because it has been mentioned that

there are the light of Torch and Lantern also, and in the light of Torch and Lantern and in the light of these Puals, the dacoits were identified by the injured eyewitnesses and the other independent eyewitness P.W.4, Diwan Chand has identified the appellant and other dacoits in the light of fire of Pual. Even in the light of the Puals, if the heap of the Pual will be burned, then the light will go in the larger area and in the larger space. There are more chance to identify the appellant and other dacoits. For this reason, the argument of learned counsel for the appellant cannot be accepted in view of the facts and circumstances of the case.

19. For the reasons mentioned above, I do not find any irregularity or illegality in the judgment and order dated 26.4.1984 passed by II Additional Sessions Judge, Nainital. So far as sentence awarded to the appellant is concerned, the sentence awarded to the appellant is also just and proper and justified as per the nature of the crime and the way of the crime committed by the appellant and other accompanied persons. Hence, the judgment and order dated 26.4.1984 passed by II Additional Sessions Judge, Nainital is hereby confirmed and the sentence for five years rigorous imprisonment awarded to him is also confirmed.

20. In view of the above, the appeal is devoid of merit and is hereby dismissed. No order as to costs.

21. Let the record of the case be immediately sent back to the trial court concerned for compliance of order.

(Dharam Veer, J.)

Rajeev Dang